Internal Revenue Service

memorandum

CC:TL-N-5304-87
Brl:MLTorri

date: MAY 6 1987

to: Director, General Litigation Division CC:GL

from: Director, Tax Litigation Division CC:TL

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subject: Computation of Interest on Estate Tax
As Affected by State Tax Credits
Your ref: CC:GL-143-87

This is in response to your memorandum dated March 19, 1987, requesting formal coordination with regard to the subject referenced above.

ISSUE

Whether interest is due under I.R.C. § 6601 from an estate on that portion of previously assessed estate tax liability against which a credit will be allowed under section 2011(a) for state death taxes actually paid and, if so, from what date and to what date may interest be assessed. 2011.00-00; 6601.00-00.

CONCLUSION

The credit allowed by section 2011(a) is conditional upon actual payment of state death taxes. Where a federal estate tax liability exists, interest should be assessed on the gross amount of the liability, including that portion which will be satisfied by the credit under section 2011, until such time as verification of payment of the state death taxes is furnished.

DISCUSSION

Following an earlier inquiry by another office, this issue was considered in O.M. 19872, Section 2011 - Restricted Interest Computation, I-240-84 (Dec. 28, 1984), but was left unresolved pending the decision of the Fourth Circuit in a case perceived to present an analogous issue. In Oxford Orphanage, Inc. v. United States, 775 F.2d 570 (4th Cir. 1985), rev'g 587 F. Supp. 1231 (M.D.N.C. 1984), the court considered the assessment of interest with respect to a prematurely claimed charitable deduction under section 2055(e). Section 2055(e)(3) permits post-mortem reformation of a will to meet the requirements for a charitable deduction. Section 2055(e), like section 2011(c), contains a restricted interest provision. The appellate court reversed the

district court's determination that interest was assessable on the gross amount of estate tax that would have been due prior to the state court's reformation of the will. Based on the legislative history of section 2055(e), the appellate court held that the estate was entitled to a charitable deduction as of the date of death because the amendment to the will made pursuant to section 2055(e)(3) relates back to the date of the testator's death. 1/

Notwithstanding the adverse decison in Oxford Orphanage, 2/ we believe that interest should be assessed in the present context from the date the estate tax return is due until the date that verification of actual payment of state death taxes is submitted to the Service. We believe there is statutory authority as well as legal precedent to assess interest on the gross estate tax liability. Oxford Orphanage is distinguishable because it relates to an entirely different Code section with a different purpose, and because the Fourth Circuit focused specifically upon the legislative history of section 2055(e)(3) in determining that Congress intended that an amended charitable bequest be retroactive to the date of the testator's death for all purposes and not merely for calculating the deduction. Consequently, in the court's view, the taxable estate is entitled to a deduction for the gift to charity as of the date of death. There is no similar legislative history with respect to section 2011(c).

We believe that more analogous case law is to be found in United States v. Koppers Co., 348 U.S. 254 (1955), and Manning v. Seeley Tube & Box Co., 338 U.S. 561 (1950), upon which the government relied in Oxford Orphanage. See also Rev. Rul 70-219, 1979-2 C.B. 401. In Koppers and Seeley Tube, unlike Oxford Orphanage, the reductions in the respective gross tax deficiencies were due to statutory provisions which did not relate back to the due dates of the returns. As in these cases, we discern nothing to indicate that the credit allowed under section 2011 is retroactive to the date of filing the return.

1/ As a result of another inquiry, we asked the Interpretative Division to reconsider the issue in light of the appellate decision in Oxford Orphanage. Unable to reach a consensus among the several divisions which would be impacted by fundamental changes in administering the issue, the Interpretative Division indicated that it had no objection to our continuing to pursue litigation in favorable factual contexts.

2/ We are in the process of drafting an Action on Decision in which we will recommend that the case not be followed outside the Fourth Circuit.

Additional support for this position is found in Schuneman v. United States, 783 F.2d 694 (7th Cir. 1986), rev'g 570 F. Supp. 1327 (C.D. Ill. 1983), despite the Seventh Circuit's unfortunate statement that section 2011(c) is "inapposite." 783 F.2d at 702 n.9. We consider this reference to be erroneous dicta inasmuch as the court based its reversal on the taxpayer's failure to follow the regulations implementing section 2011. In our view, section 2011(c) can be the only statutory basis for the Seventh Circuit's holding that assessed interest ran from the date the estate tax return was due until the date the taxpayer presented verification to the Service that the state death taxes had been paid. In any event, the result in Schuneman is consistent with the position the government unsuccessfully asserted in Oxford Orphanage and which we intend to continue to assert in cases not appealable to the Fourth Circuit.

We understand the enormous administrative problems which would result if the processing of every estate tax return had to await proof of actual payment of the state death taxes for which the credit is claimed. For this reason, we recommend that interest should be assessed only in very limited situations, as where the federal estate tax has been underpaid and an audit deficiency is determined and assessed.

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